

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 21, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KARINA C.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

No. 2:20-CV-00473-JAG

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 16, 17. Attorney D. James Tree represents Karina C. (Plaintiff); Special Assistant United States Attorney Jamala Edwards represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **DENIES** Plaintiff's Motion for Summary Judgment; and **GRANTS** Defendant's Motion for Summary Judgment.

I. JURISDICTION

Plaintiff filed an application for Supplemental Security Income on April 16, 2018, alleging disability since August 20, 2016,¹ due to sleep apnea, learning disorder, full-scale IQ of 77, bipolar, anxiety, PTSD, ADHD, and depression. Tr. 66-67. The application was denied initially and upon reconsideration. Tr. 94-97,

¹ At the hearing Plaintiff amended her alleged onset date to the protected filing date, April 16, 2018. Tr. 39.

1 101-03. Administrative Law Judge (ALJ) M.J. Adams held a hearing on January 8,
2 2020, Tr. 36-64, and issued an unfavorable decision on April 28, 2020. Tr. 15-29.
3 Plaintiff requested review of the ALJ's decision by the Appeals Council and the
4 Appeals Council denied the request for review on October 28, 2020. Tr. 1-6. The
5 ALJ's April 2020 decision is the final decision of the Commissioner, which is
6 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
7 action for judicial review on December 23, 2020. ECF No. 1.

8 **II. STATEMENT OF FACTS**

9 The facts of the case are set forth in detail in the transcript of proceedings
10 and only briefly summarized here. Plaintiff was born in 1993 and was 24 years old
11 when she filed her application. Tr. 28. She was in special education throughout her
12 schooling and received a high school diploma. Tr. 28, 281, 591. She has a minimal
13 work history, last having worked in 2016 for two months at McDonald's. Tr. 42-
14 44, 204. She had a difficult childhood, having been abused by various family
15 members, and was the victim of domestic violence at the hands of her husband. Tr.
16 315, 386, 590. In 2018, Plaintiff experienced issues with methamphetamine abuse,
17 alcohol abuse, cannabis use, and use of amphetamine-type substances. Tr. 24. Her
18 mental health deteriorated when her children were removed from her home, and in
19 May 2019 she attempted suicide by overdose. Tr. 281, 591, 805, 1225, 1315.
20 Plaintiff continued to experience issues with child custody throughout 2019.
21 Tr. 21.

22 **III. STANDARD OF REVIEW**

23 The ALJ is responsible for determining credibility, resolving conflicts in
24 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
25 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
26 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
27 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
28 only if it is not supported by substantial evidence or if it is based on legal error.

1 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
 2 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
 3 1098. Put another way, substantial evidence is such relevant evidence as a
 4 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
 5 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
 6 rational interpretation, the Court may not substitute its judgment for that of the
 7 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
 8 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
 9 administrative findings, or if conflicting evidence supports a finding of either
 10 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
 11 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
 12 supported by substantial evidence will be set aside if the proper legal standards
 13 were not applied in weighing the evidence and making the decision. *Browner v.*
 14 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

15 IV. SEQUENTIAL EVALUATION PROCESS

16 The Commissioner has established a five-step sequential evaluation process
 17 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
 18 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant
 19 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d
 20 at 1098-1099. This burden is met once a claimant establishes that a physical or
 21 mental impairment prevents the claimant from engaging in past relevant work. 20
 22 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ
 23 proceeds to step five, and the burden shifts to the Commissioner to show (1) the
 24 claimant can make an adjustment to other work; and (2) the claimant can perform
 25 specific jobs that exist in the national economy. *Batson v. Commissioner of Social*
 26 *Sec. Admin.*, 359 F.3d 1190, 1193-1194 (9th Cir. 2004). If a claimant cannot make
 27 an adjustment to other work in the national economy, the claimant will be found
 28 disabled. 20 C.F.R. § 416.920(a)(4)(v).

1 **V. ADMINISTRATIVE FINDINGS**

2 On April 28, 2020, the ALJ issued a decision finding Plaintiff was not
3 disabled as defined in the Social Security Act. Tr. 15-29.

4 At **step one**, the ALJ found Plaintiff had not engaged in substantial gainful
5 activity since the application date. Tr. 18.

6 At **step two**, the ALJ determined Plaintiff had the following severe
7 impairments: major depressive disorder, borderline intellectual functioning, bipolar
8 disorder, general anxiety disorder, attention deficit hyperactivity disorder, and
9 posttraumatic stress disorder. *Id.*

10 At **step three**, the ALJ found Plaintiff did not have an impairment or
11 combination of impairments that met or medically equaled the severity of one of
12 the listed impairments. Tr. 19-22. The ALJ assessed Plaintiff's Residual Functional
13 Capacity (RFC) and found she could perform work at all exertional levels, with the
14 following non-exertional limitations:

15 She can understand, remember and carry out simple instructions; and
16 exercise simple workplace judgment. She can perform work that is
17 learned on the job in less than 30 days by short demonstration and
18 practice or repetition. She can respond appropriately to supervision, and
19 can have superficial interaction with coworkers. She can deal with
20 occasional changes in the work environment. She can work in jobs that
21 do not require interaction with the general public to perform the work
22 task. This does not preclude the general public being present in the work
23 area.

24 Tr. 22.

25 At **step four**, the ALJ found Plaintiff had no past relevant work. Tr. 28.

26 At **step five** the ALJ found that, considering Plaintiff's age, education, work
27 experience and residual functional capacity, Plaintiff could perform jobs that
28 existed in significant numbers in the national economy, specifically identifying the

1 representative occupations of hand packager, auto detailer, and laundry worker. Tr.
2 28.

3 The ALJ thus concluded Plaintiff was not under a disability within the
4 meaning of the Social Security Act at any time from the date the application was
5 filed through the date of the decision. Tr. 29.

6 VI. ISSUES

7 The question presented is whether substantial evidence supports the ALJ's
8 decision denying benefits and, if so, whether that decision is based on proper legal
9 standards. Plaintiff contends the Commissioner erred by: (1) improperly rejecting
10 Plaintiff's testimony; and (2) improperly evaluating the medical opinion evidence.

11 VII. DISCUSSION

12 A. Plaintiff's Subjective Statements.

13 Plaintiff contends the ALJ erred by improperly rejecting her subjective
14 complaints. ECF No. 16 at 6-12.

15 It is the province of the ALJ to make determinations regarding a claimant's
16 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
17 However, the ALJ's findings must be supported by specific, cogent reasons.
18 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant
19 produces medical evidence of an underlying medical impairment, the ALJ may not
20 discredit testimony as to the severity of an impairment merely because it is
21 unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
22 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting
23 the claimant's testimony must be "specific, clear and convincing." *Smolen v.*
24 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834
25 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must identify
26 what testimony is not credible and what evidence undermines the claimant's
27 complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.
28 1993).

1 The ALJ concluded Plaintiff's medically determinable impairments could
2 reasonably be expected to produce some of the alleged symptoms; however,
3 Plaintiff's statements concerning the intensity, persistence and limiting effects of
4 those symptoms were not entirely consistent with the medical evidence and other
5 evidence in the record. Tr. 23. The ALJ found Plaintiff's complaints were
6 unsupported by the objective evidence of record and undermined by evidence of
7 noncompliance with treatment, potential drug seeking, and Plaintiff's and her
8 providers' statements throughout the record. Tr. 23-25.

9 Plaintiff argues the ALJ's rationale is insufficient, as the ALJ selectively
10 cited the record and ignored the context of Plaintiff's statements and behaviors.
11 ECF No. 16 at 6-12. Defendant argues the ALJ reasonably evaluated the record
12 and pointed to substantial evidence of benign clinical findings, inconsistent
13 statements, noncompliance with treatment, and substance abuse. ECF No. 17 at
14 3-10.

15 The Court finds the ALJ offered clear and convincing reasons for
16 discounting Plaintiff's reports. An ALJ may consider inconsistent statements by
17 the claimant in assessing the reliability of her symptoms. *Tonapetyan v. Halter*,
18 242 F.3d 1144, 1148 (9th Cir. 2001); *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th
19 Cir. 2002). An ALJ may also reasonably question a claimant's allegations if they
20 are inconsistent with her demonstrated activities. *Orn v. Astrue*, 495 F.3d 625, 639
21 (9th Cir. 2007). The ALJ considered all of these factors.

22 Furthermore, while it cannot serve as the sole basis for disregarding a
23 claimant's reports, support from objective medical evidence is a relevant factor in
24 determining the severity of the claimant's symptoms. *Rollins v. Massanari*, 261
25 F.3d 853, 857 (9th Cir. 2001). The ALJ's interpretation of the objective records as
26 not substantiating Plaintiff's complaints was reasonable and supported by the
27 record. While Plaintiff offers an alternative interpretation of the objective
28 evidence, her arguments do not amount to demonstrating legal error on the part of

1 the ALJ. “When the evidence is susceptible to more than one rational
2 interpretation, we must uphold the ALJ’s findings if they are supported by
3 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
4 1111 (9th Cir. 2012). The ALJ did not err.

5 **B. Medical Opinion Evidence.**

6 Plaintiff argues the ALJ erred in evaluating the medical opinions from
7 consultative examiner Dr. Thomas Genthe and Brook Sjostrom, MS, LMHC. ECF
8 No. 16 at 12-19.

9 For claims filed on or after March 27, 2017, new regulations apply that
10 change the framework for how an ALJ must weigh medical opinion evidence.
11 Revisions to Rules Regarding the Evaluation of Medical Evidence, 2017 WL
12 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new
13 regulations provide the ALJ will no longer give any specific evidentiary weight to
14 medical opinions or prior administrative medical findings, including those from
15 treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ will consider
16 the persuasiveness of each medical opinion and prior administrative medical
17 finding, regardless of whether the medical source is an Acceptable Medical Source.
18 20 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors,
19 including supportability, consistency, the source’s relationship with the claimant,
20 any specialization of the source, and other factors (such as the source’s familiarity
21 with other evidence in the file or an understanding of Social Security’s disability
22 program). *Id.* The regulations make clear that the supportability and consistency of
23 the opinion are the most important factors, and the ALJ must articulate how they
24 considered those factors in determining the persuasiveness of each medical opinion
25 or prior administrative medical finding. 20 C.F.R. § 416.920c(b). The ALJ may
26 explain how they considered the other factors, but is not required to do so, except
27 in cases where two or more opinions are equally well-supported and consistent
28 with the record. *Id.*

1 Supportability and consistency are further explained in the regulations:

2 (1) Supportability. The more relevant the objective medical
3 evidence and supporting explanations presented by a medical
4 source are to support his or her medical opinion(s) or prior
5 administrative medical finding(s), the more persuasive the
6 medical opinions or prior administrative medical finding(s) will
7 be.

8 (2) Consistency. The more consistent a medical opinion(s) or
9 prior administrative medical finding(s) is with the evidence from
10 other medical sources and nonmedical sources in the claim, the
11 more persuasive the medical opinion(s) or prior administrative
12 medical finding(s) will be.

13 20 C.F.R. § 416.920c(c). The Ninth Circuit has additionally held that the new
14 regulatory framework displaces the longstanding case law requiring an ALJ to
15 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a
16 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir.
2022).

17 **1. Dr. Genthe.**

18 Plaintiff attended a consultative psychological exam with Dr. Thomas
19 Genthe in February 2018. Tr. 292-302. Dr. Genthe diagnosed Plaintiff with bipolar
20 disorder, PTSD, ADHD, and borderline intellectual functioning. Tr. 295. He
21 opined she was markedly and severely limited in numerous work-related functional
22 categories, and concluded that Plaintiff was unlikely to be able to function
23 adequately from a psychological perspective until her symptoms were better
24 managed. Tr. 295-96.

25 The ALJ found this opinion to be unpersuasive, finding Dr. Genthe offered
26 no explanation to justify his answers and did not review any of Plaintiff’s medical
27 records. Tr. 27. The ALJ further concluded that the marked and severe limits were
28 inconsistent with the exam and the record as a whole. *Id.*

1 Plaintiff argues the ALJ erred, as Dr. Genthe offered a lengthy discussion
2 and explanation of his findings and noted abnormal results on the mental status
3 exam. ECF No. 16 at 14-17. She further asserts the ALJ failed to identify what
4 inconsistencies existed between the report and the record as a whole, or what
5 medical evidence Dr. Genthe could have reviewed that would likely have changed
6 his position. *Id.* at 16-18. Defendant argues the ALJ reasonably interpreted the
7 exam findings and the remainder of the record, and reasonably found the opinion
8 to be unsupported by a sufficient explanation, given the clinical testing. ECF No.
9 17 at 15-17.

10 The Court finds the ALJ's discussion is supported by substantial evidence.
11 The ALJ reasonably considered the basis of Dr. Genthe's opinion, including failure
12 to review Plaintiff's longitudinal history. The ALJ cited to the record many
13 instances across the medical record that may have altered Dr. Genthe's opinion,
14 had Dr. Genthe reviewed the record. The ALJ also reasonably relied upon
15 contradictions between Dr. Genthe's mental status exam and clinical testing and
16 Dr. Genthe's checkbox conclusions.

17 **2. Ms. Sjostrom.**

18 In March 2019, Ms. Brooke Sjostrom complete a medical source statement
19 opining Plaintiff was markedly limited in a number of work-related functional
20 abilities, and opined that she would continue to be so limited for six to twelve
21 months. Tr. 707-13. The ALJ found this opinion to be unpersuasive, noting it was
22 an overestimate of the severity of Plaintiff's restrictions based only on a snapshot
23 of her functioning at a time when she had been off her medication for quite some
24 time. Tr. 27. The ALJ found Plaintiff's symptoms and limitations improved after
25 she restarted treatment. *Id.*

26 Plaintiff argues the ALJ's rationale is not supported by the evidence, which
27 indicated she had restarted her medications prior to this exam and had seen some
28 improvement. ECF No. 16 at 18-19. Defendant argues the ALJ's conclusion was

1 supported by substantial evidence. ECF No. 17 at 17-19. The Court agrees; the
2 ALJ's conclusion was supported by substantial evidence.

3 **VIII. CONCLUSION**

4 Having reviewed the record and the ALJ's findings, the Court concludes the
5 ALJ's decision is supported by substantial evidence and is not based on legal error.

6 Accordingly, **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED**.

8 2. Defendant's Motion for Summary Judgment, **ECF No. 17**, is
9 **GRANTED**.

10 The District Court Executive is directed to file this Order and provide a copy
11 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
12 and the file shall be **CLOSED**.

13 DATED September 21, 2022.



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JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE